

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRENDA BARNES-GEORGE,

Plaintiff,

Case No. 07cv9660 (SCR)

-against-

Honorable Stephen C. Robinson

YONKERS PUBLIC SCHOOL DISTRICT,
SHARON WOODS, CAROLE-ANN DUNLEAVY,
and BEVERLY NASH,

Defendants.
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**DEFENDANTS' REPLY MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

DONOGHUE, THOMAS, AUSLANDER & DROHAN, LLP
Attorneys for defendants the Yonkers Public School District,
Sharon Woods, Carol-Ann Dunleavy, and Beverly Nash
2517 Route 52
Hopewell Junction, NY 12533
Tel. No. (845) 227-3000
Fax No. (845) 227-6873

ARGUMENT

DEFENDANTS' REQUEST TO DISMISS THOSE CLAIMS ALLEGED BY PLAINTIFF TO HAVE TAKEN PLACE MORE THAN 300 DAYS FROM FILING THE EEOC COMPLAINT IS NOT PREMATURE

An “employment practice” refers to “a discrete act or single ‘occurrence’” that takes place at a particular time. Ledbetter v. Goodyear Tire & Rubber Co., Inc., 127 S.Ct. 2162, 2169 [2007] [citing, National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 110-111, 122 S.Ct. 2061, 2071 (2002)]. Defendants acknowledge that under Title VII, there is a distinction between discrete acts and continuing violations for statute of limitations purposes. See, e.g., Moreno v. Town of Huntington, 2008 WL 746830 [E.D.N.Y.].

However, Defendants’ motion is not premature as the facts alleged in the Complaint constitute discrete acts, each one triggering Plaintiff’s obligation to file a complaint with the EEOC if Plaintiff seeks a remedy through Title VII. For example, in the “Acts of Discrimination” memorandum, incorporated into Plaintiff’s Complaint, Plaintiff alleges that she on one occasion prevented from challenging negative comments included in her yearly evaluations [see, p. 1 of “Acts of Discrimination” memorandum]. Plaintiff then alleges that in June of 2005, she was not allowed to access all reading scores provided by the principal of the school [Id. at p.2]. Plaintiff then alleges that the District took no action when another District employee “displayed emotional outbursts” in a threatening and intimidating manner [Id. at p.3]. Plaintiff also alleges that she was given a “small blue student’s chair” rather than an adult chair for a meeting [Id. at p.5], that the District did not properly coordinate school reading programs [Id. at p.6], that another employee, Defendant Nash (whom Plaintiff agrees is not a proper

defendant in this action), did not say “excuse me” after passing Plaintiff in a “confrontational manner” [Id. at p.7], and that certain reading workshops were improperly managed [Id. at p.8-9].

Defendants submit that each of these factual allegations constitute discrete act within the meaning of Title VII. Ledbetter v. Goodyear Tire & Rubber Co., Inc., 127 S.Ct. at 2169; Moreno v. Town of Huntington, 2008 WL 746830. Therefore, those claims that are outside the statute of limitations window should be dismissed.

Alternatively, if the Court rules in favor of Plaintiff on the basis that Defendants’ motion to dismiss based on the applicable statute of limitations is premature, Defendants respectfully request leave to seek dismissal after discovery has taken place.

CONCLUSION

THE DEFENDANT'S MOTION SHOULD BE GRANTED, IN ALL RESPECTS.

Dated: Hopewell Junction, New York
April 11, 2008

Yours, etc.



By Neelanjana Choudhury, Esq. (NC2342)
DONOGHUE, THOMAS, AUSLANDER &
DROHAN, LLP
Attorneys for Defendants
Yonkers Public School District, Sharon Woods,
Carol-Ann Dunleavy, and Beverly Nash
2517 Route 52
Hopewell Junction, New York 12533
Tel.: (845) 227-3000
Fax: (845) 227-6873

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF DUTCHESS)

CHRISTINE A. MERSAND, being duly sworn, deposes and says that she is over the age of eighteen years, is not a party in this action, and resides at Pawling, New York 12564.

On the 10th day of April 2008 deponent served the within Reply Memorandum in Support of Motion to Dismiss on:

Michael H. Sussman, Esq.
Sussman & Watkins
40 Park Place
Goshen, NY 10924

by delivery by Federal Express.


CHRISTINE A. MERSAND

Sworn to before me this
10th day of April 2008.


(NOTARY PUBLIC)

LYNNANN W. CYBULSKI
Notary Public, State of New York
Qualified in Orange County
No. 4975852
Commission Expires December 26, 2010